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## Foreword

Susan Hansen

Street art and graffiti are commonly defined with reference to the art/crime nexus. Older understandings of illicit work on the street defined these works in criminological terms, often with reference to the now discredited broken windows theory.<sup>1</sup> However, as Ferrell notes, this older understanding now coexists with a newer understanding grounded in an appreciation of street art and graffiti as an ‘artistic undertaking’:

“Street art and graffiti can be defined as criminal threat, or as artistic undertaking and commercial opportunity... they can lead some of their practitioners to prison, and others to the gallery... with the first more likely to seek a good defense attorney, and the second a skilled copyright lawyer.”<sup>2</sup>

It is of note that here Ferrell links artistic undertaking to commercial opportunity – rather than to creative endeavor per se. In doing so, he positions the application of copyright law as something that follows logically from the acceptance of graffiti and street art as legitimate art forms, which as such, will naturally acquire a commercial value potentially vulnerable to appropriation and worthy of protection. However defined, it seems that street artists and graffiti writers are still likely to require legal assistance!

*The Cambridge Handbook of Copyright in Street Art and Graffiti* marks a pivot point in the complex and unpredictable historical journey of graffiti and street art. While they are now certainly recognised as art forms, this is not primarily an art historical narrative. Indeed, exponentially increasing levels of interest in graffiti and street art have generated a radically interdisciplinary and rapidly expanding field of scholarship and practice, reflecting street art and graffiti’s status as socio-legal-artistic phenomena that exceed the purview of any one discipline. There are now peer reviewed journals and academic conferences devoted to graffiti and street art, which bring together art historians, architects, cultural geographers, archaeologists, psychologists, criminologists, sociologists, and heritage and legal scholars to debate and define this emerging field.

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<sup>1</sup> Wilson, J. & Kelling, G. (1982) Broken Windows. *The Atlantic Monthly*. 249 (3):29–38.

<sup>2</sup> Ferrell, J. (2016) Graffiti, Street Art and the Politics of Complexity. In J. Ross (Ed.) *Routledge Handbook of Graffiti and Street Art*. London: Routledge. p. xxxii.

This handbook is timely in that it squarely addresses a now pressing issue facing street art and graffiti practitioners and their allies – the use of, or removal of, artists' work without permission. As such, it is likely to prove an invaluable resource for artists, writers, scholars, and legal practitioners, as it contains both a discussion of the considerable legal, socio-moral and philosophical matters at stake and also a series of detailed legal analyses of the potential application of copyright law, by jurisdiction.

Encouragingly, there is also a healthy level of debate and divergence of opinion within this volume – which to some extent echoes some of the points of contestation evident within these subcultures, and indeed the general community. It is a credit to the Editor of this handbook that this level of divergence in opinion has been actively solicited, rather than diluted – indeed, this is in keeping with the radical subcultural ethos of street art and graffiti.

Thus, while Westenberg, in this volume, frames copyright as a benevolent form of protection, fundamentally based on universally applicable principles of human rights and justice, and as an incentivizing reward for creativity, this is not without counterpoint. Westenberg argues that “it would go against the purpose and ethos of copyright law to leave graffiti works unprotected.”<sup>3</sup> It is surely an unthinkable task to refuse the extension of such munificent protection, however Baldini's final critical chapter does precisely this. Indeed, Baldini's rejection of copyright as a solution is grounded in an alternative set of subcultural (rather than universal) principles. He argues that copyright is fundamentally incompatible with the subversiveness that is a defining element of the ethos and subcultural identity of street art and graffiti, and that this may even pose a threat to the survival of this art form, as such. Perhaps, as classical behavioural psychology has taught us, the offer of an extrinsic reward may come at the cost of extinguishing once previously satisfying intrinsic rewards.<sup>4</sup>

This conflict in universal versus subcultural ethos reflects the disjuncture between top-down versus bottom-up approaches to copyright – should practices (or ‘copynorms’) inform the law, or should law inform the practice? The importance of interdisciplinary scholarship – such as that brought together in this volume – is that we can critically appreciate and respect the contributions, worth, and impact of both top-down and bottom-up approaches.

Also in this handbook, Bengtson considers, and ultimately rejects, the application of copyright law to combat the acquisitive removal of street art from its *in-situ* location for private auction - without the consent of either the artist or the community in which the street art is located. The tension at the basis of this ostensibly lawful yet morally problematic practice is grounded in the clash between the rights of property owners, the rights of street artists, and the rights of communities – who increasingly regard street art as a form of public art intended for their enjoyment. Of course, this tension is compounded by the fact that the creation of unauthorized public works may constitute criminal damage, and thus some street artists may not be willing to publicly acknowledge authorship for fear of prosecution.<sup>5</sup>

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<sup>3</sup> See Paula Westenberg's chapter “Copyright Protection of Illegal Street and Graffiti Artworks”, p. ....

<sup>4</sup> Eisenberger, R., & Cameron, J. (1996). Detrimental effects of reward: Reality or myth? *American Psychologist*, 51 (11) 1153-1166.

<sup>5</sup> Young, A. (2014) *Street Art, Public City: Law, Crime and the Urban Imagination*. London: Routledge.

As Bengtsen and others note, these are not just issues debated by scholars and legal practitioners - there is also a significant level of community debate on the value (and commodification) of street art.<sup>6</sup> Indeed, contemporary street art poses challenges to existing aesthetic, legal, and heritage frameworks, and has provided the conditions of possibility for recent shifts in socio-moral urban codes, towards a more positive appreciation of street art and graffiti as genuine art forms worthy of recognition and protection.

As several authors in this volume point out, contemporary works of street art are commonly received by communities as a 'gift'. This reflects an increasingly established socio-moral urban norm regarding the value of street art to communities, which in turn sets parameters for the actions perceived as being appropriate responses to its discovery. However, it should be noted that this is an historically recent understanding that is still contested. The extent to which graffiti is normatively received as a 'gift' is also debatable. Graffiti is often regarded as less aesthetically palatable than street art, and as something which diminishes, rather than enhances, the value and social capital of a community.<sup>7</sup>

Perceived as a 'gift', street art is accorded with a self-evident socio-moral purpose—which locates it both within and outwith the aesthetic regime that, according to Jacques Rancière, characterizes what we consider as art today. Rancière argued that the social purpose of art from the aesthetic regime is its very purposelessness;<sup>8</sup> however, he also noted that a defining element of this regime is its incorporation of remnants of other regimes, which may 'co-exist and intermingle.'<sup>9</sup> At the level of both production and reception, street art provides a link to an earlier, ethical regime of images evaluated in terms of their utility, or worth, to society.

These are issues of significant local relevance for contemporary urban communities, who have adopted a persuasive set of urban moral codes that construes illicit art in public space as a prosocial 'gift' – and morally problematic, yet liminally legal actions (such as removing street art for private auction, or appropriating street art and graffiti to sell products) as forms of 'criminal' activity. These are interesting and rapidly changing times in the journey of street art and graffiti. *The Cambridge Handbook of Copyright in Street Art and Graffiti* represents an invaluable navigational resource, giving the reader a critical appreciation of the breadth and complexity of contemporary scholarship, legal opinion, and subcultural stance(s) towards the application of copyright law to street art and graffiti, with sensitivity to the rights, concerns, and interests of a range of actors.

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<sup>6</sup> See, for example Hansen, S. (2015) 'Pleasure Stolen from the Poor': Community Discourse on the 'Theft' of a Banksy. *Crime, Media & Culture*. doi:10.1177/ 1741659015612880.

<sup>7</sup> Young, A. (2014) *Street Art, Public City: Law, Crime and the Urban Imagination*. London: Routledge.

<sup>8</sup> Highmore, B. (2011) Out of Place: Unprofessional Painting, Jacques Rancière and the Distribution of the Sensible. In *Critical Dissensus: Reading Rancière*. Edited by P. Bowman and R. Stamp. London: Continuum.

<sup>9</sup> Rancière, J. (2004) *The Politics of Aesthetics*. London: Continuum. p. 50.